IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 27/2003

GAURISHANKAR
Vs.
ADDITIONAL REGISTRAR-II, CO-OPERATIVE SOCIETIES,
JAIPUR & ORS.

DATE: 04.12.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Suresh Sahni with
Mr. R.M. Sharma for the petitioner.
Mr. B.S. Chhaba, Dy. GA for the State.

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The present writ petition is directed against the judgment dated 16.10.96 passed by the Kshetriya Ankekshak Adhikari, Co-operative Societies, Jaipur as well as the judgment dated 05.06.99 passed by the Appellate Court and the judgment dated 23.04.2002 passed by the Revisional Court.

The petitioner besides challenging the aforesaid impugned orders, also challenged the proceedings initiated under Section 118 of the Rajasthan Co-operative Society Act, 1965 (for short 'the Act of 1965') vide proclamation of the auction dated 30.12.2002.

The Kshetriya Ankekshak Adhikari, Co-operative Societies, Jaipur initiated proceedings against the petitioner under Section 74 of the Rajasthan Co-operative Societies Act, 1965 on 16.10.96, against which the petitioner preferred an appeal under Section 124 of the Act of 1965 before the Additional Registrar-II, Co-operative Societies, Rajasthan, Jaipur and the same was dismissed by the Additional Registrar-II vide judgment dated 05.06.99.

Being aggrieved with the aforesaid judgments dated 16.10.96 and 05.06.99 passed by the Kshetriya Ankekshak Adhikari, Co-operative Societies, Jaipur and the Additional Registrar-II, Co-operative Societies, Jaipur respectively, the petitioner preferred a revision petition under Section 128 of the Act of 1965 before the Court of State Co-operative Minister, Govt. of Rajasthan, Jaipur and the same was also came to be dismissed by the Revisional Court vide judgment dated 23.04.2002. Since the petitioner has not deposited any amount as per the orders passed by the respondents in appeal and revision, proceedings under Section 118 of the Act of 1965 have been initiated against the petitioner and issued a proclamation for auction of the agriculture land of the petitioner.

The aforesaid orders dated 16.10.96, 05.06.99 and 23.04.2002 passed by the respondents are challenged by the petitioner on the ground that the Appellate Court as well as the Revisional Court have not properly examined the controversy involved in the matter and the petitioner has not been provided opportunity of being heard and also deprived of the opportunity to cross examine the witnesses and the respondents have also committed a serious illegality while issuing proclamation for auction of the agriculture land of the petitioner which does not exclusively belongs to the petitioner and as being joint property, the same cannot be auctioned.

Per contra, learned Govt. Advocate appearing for the State has strongly controverted that the documents and copies which have been asked for, are not supplied to the petitioner, on the contrary, it is submitted that opportunity of being heard was provided to the petitioner but the petitioner deliberately has not availed the same and has levelled vague and bald allegations against the respondents without any substance.

With regard to the allegation that opportunity of being heard was not provided to the petitioner, it has been submitted by the respondents

that the petitioner was served with the notice on 28.10.94, 06.12.94, 08.03.95 and 14.05.95, but in spite of that, the petitioner never appeared in the proceedings under Section 74(1) and 74(2) and only sought time on the pretext of illness but he miserably failed to submit any such certificate.

I have heard rival submissions of the respective parties and have also gone through the orders impugned passed by the respondents.

In order impugned dated 05.06.99, the Additional Registrar-II, Co-operative Societies, Rajasthan, Jaipur has thoroughly considered the order dated 16.10.96 passed by the Regional Auditor of the Society. The Regional Auditor on the basis of the audit report, initiated proceedings under Section 74 of the Act of 1965 and found the allegations proved against the petitioner and directed the petitioner to deposit the amount, the details of which has been given by the Additional Registrar-II as under:-

> 1. दिनांक 30.6.87 से 18 प्रतिशत की दर से ब्याज की राशि एवं 18953.33 अक्षरे अठारह हजार नौ सौ तिरेपन रूपये तैंतीस पैसा मूल रकम।
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> 2. दिनांक 14.5.88 से 18 प्रतिशत की दर से ब्याज की राशि एवं 37806.00 अक्षरे सैंतीस हजार आठ सौ छः रूपये मूल रकम।
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> 3. दिनांक 31.5.87 से 18 प्रतिशत की दर से ब्याज एवं 65893.75 अक्षरे पैसठ हजार आठ सौ तिरानवे रूपये पिचत्तर पैसे मात्र मूल रकम।

4. दिनांक 13.5.87 से 18 प्रतिशत की दर से ब्याज एवं रूपये 7216.85 रूपये सात हजार दो सौ सोलह रूपये पिचासी पैसे मूल रकम।"

Upon perusal of the relevant record, it is clear that notices were served upon the petitioner on 28.10.94, 06.12.94, 08.03.95 and 14.05.95 but the petitioner failed to participate in the proceedings initiated against him under Section 74(1) and 74(2) of the Act of 1965.

The Co-operative Minister, Govt. of Rajasthan while hearing the revision under Section 128 of the Act of 1965, has also considered all the aspects, particularly the aspect that the petitioner was given as many as 23 chances to submit reply and the evidence, but on the ground of ailment the petitioner did not file the same well within time and the Revisional Court has upheld the order passed by the Appellate Authority vide its judgment dated 23.04.2002.

Thus, concurrent findings are given against the petitioner and this Court is not impressed with the submissions made on behalf of the petitioner that he has not been provided opportunity of being heard. As evident from the record of the case, the petitioner was given ample opportunities to represent his case, but the petitioner has not availed the same, therefore,

the matter cannot be sent back for re-hearing as the liability under Section 74 of the Act of 1965 has been fixed upon the petitioner beyond doubt. Therefore, the concurrent findings given against the petitioner require no interference by this Court and this Court do not find any merit in the writ petition.

Consequently, the writ petition fails being devoid of merit and the same is hereby dismissed.

The ex parte interim order dated 07.01.2003 granted by this Court stands rejected. The stay application also stands dismissed.

(K.S. RATHORE),J.

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